



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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May 10, 2010

Michael B. Murray, Superintendent
Cape Hatteras National Seashore
1401 National Park Drive
Manteo, North Carolina 27954

SUBJECT: Draft Off-Road Vehicle Management Plan/Environmental Impact Statement for the Cape Hatteras National Seashore in Manteo, North Carolina; CEQ Number 20100072

Dear Mr. Murray:

The U.S. Environmental Protection Agency (EPA) has reviewed the referenced Draft Off-Road Vehicle (ORV) Management Plan/Environmental Impact Statement (EIS) in accordance with its responsibilities under Section 309 of the Clean Air Act and Section 102(2)(C) of the National Environmental Policy Act. The purpose of this ORV management plan and Draft EIS is to evaluate the impacts of several alternatives for regulations and procedures that would carefully manage ORV use/access at Cape Hatteras National Seashore (CHNS) in Manteo, North Carolina, for the next 10 to 15 years. The National Park Service (NPS) is the lead federal agency for the proposed action.

NPS management plans represent the broadest level of planning conducted by the NPS and are intended to provide overall guidance for making informed decisions about future conditions in national parks. The outcome of the Draft EIS will also form the basis for a special regulation to manage ORV use at CHNS to protect and preserve natural and cultural resources and natural processes, to provide a variety of visitor use experiences while minimizing conflicts among various users, and to promote the safety of all visitors. The Draft EIS assesses the environmental impacts of six alternatives (A, B, C, D, E and F). Two no-action alternatives were analyzed to capture the full range of management actions that occurred and are currently occurring at CHNS. Alternative A represents continuation of management based on the 2007 Interim Protected Species Management Strategy. This management strategy was challenged in court and subsequently modified by a consent decree signed in 2008. Alternative B represents continuation of management as described in the consent decree.

Four action alternatives were evaluated. Alternative C would provide visitors to CHNS with a degree of predictability regarding areas available for ORV use, as well as vehicle-free areas, based largely on the seasonal resource and visitor use characteristics of various areas in CHNS. Under Alternative D, visitors to CHNS would have the maximum amount of predictability regarding areas available for ORV use and vehicle-free areas for pedestrian use with most areas having year-round, rather than seasonal designations. Restrictions would be

applied to larger areas over longer periods of time to minimize changes in designated ORV and non-ORV areas over the course of the year. Alternative D is identified as the environmentally preferable alternative. Alternative E would provide for the greatest amount of flexibility in access for both ORV and pedestrian users, including allowing some level of overnight vehicle use at selected points and spits. Where greater access is permitted, often additional controls or restrictions would be in place to limit impacts on sensitive resources. Alternative F includes a similar amount of access as provided under Alternative E, but with different limitations on allowable times and dates of ORV access. Alternative F is identified as the NPS preferred alternative.

CHNS provides important habitats and plays a vital role in the survival of many wildlife species, including a number of rare, unique, threatened and endangered species. ORV use along the CHNS can disrupt habitat or cause a loss of habitat in high use areas. Habitat loss due to ORV use could also occur indirectly as a result of the noise and disturbance from this activity. A number of these species have had historically low reproductive rates. The lack of large undisturbed areas for successful breeding contributes to these low rates at CHNS. Frequent human disturbance can cause the abandonment of nest sites as well as direct loss of eggs and chicks.

Vegetated wetlands along the soundside and interior of the islands are susceptible to direct damage from ORV use. Estuarine wetlands are often denuded of vegetation when ORVs are driven and parked along the soundside shoreline. Also, many of the interior or interdunal roads are located near wetland areas that are often not noticeable to visitors. When standing water is present along these ORV routes, visitors often drive over adjacent vegetated areas in an attempt to avoid the standing water. This results in wider roads, new vehicle routes, and crushed or dead vegetation. Construction of new parking areas is also of concern for wetlands that may be located nearby.

In general, EPA strongly supports the restriction of use of ORVs to specifically-designated routes that are clearly posted as such and monitored accordingly and to eliminate the use of ORVs within ecologically sensitive areas. Therefore, EPA supports the inclusion of a number of elements common to all the action alternatives that address this interest, including: 1) the establishment of areas that allow ORV use and vehicle-free (non-ORV) areas where ORV use is prohibited; 2) a requirement that ORV operators must drive only on marked ORV routes and must comply with posted restrictions; 3) increased education and outreach to support this requirement; 4) the establishment of Species Management Areas (SMAs) for protection of threatened and endangered species during the breeding and nonbreeding seasons; 5) a requirement that ORV operators must secure vehicular permits for use of designated ORV routes; and 6) the establishment of ORV carrying capacity limits for certain sensitive locations at CHNS. All of these measures when taken together should serve to minimize impacts to a number of the sensitive resources described above. However, the primary difference between the action alternatives is the amount of access each allows for ORV use and the degree of flexibility in establishing the operating parameters associated with the designated ORV routes.

EPA's primary concern about the preferred alternative (Alternative F) is that it designates the second-highest amount of shoreline miles for ORV use and includes the greatest number of new (or relocated) access ramps, parking areas, and new roads and trails among the action alternatives. There appears to be a significant number of existing access points and roads on CHNS, and it is unclear from the Draft EIS of the need for this additional access. These trails and roads will likely lead to additional potential impacts to soils and wetlands, particularly from ORV use in and around vegetated wetlands on the soundside and along interior ORV routes. Alternative F also allows for greater flexibility in the establishment and enforcement of buffer zones during the breeding season, night-time driving restrictions, and has higher carrying capacities in certain areas than other alternatives, which could lead to the disruption to sensitive and endangered wildlife. Alternative F will also require significantly more resources and operating costs to fully manage the greater flexibility that it allows while attempting to ensure environmental resources are adequately protected. EPA has concerns that the NPS will not have the ability to fully enforce and maintain the protection of sensitive resources if Alternative F is implemented.

EPA agrees with the NPS designation of Alternative D as the environmentally preferable alternative. Alternative D includes the greatest number of shoreline miles closed to ORVs and the least number of miles designated as ORV routes. It also has the least number of new or relocated access ramps, new parking lots, and new ORV interdunal roads. It also provides the greatest level of protection for sensitive species through the establishment of SMAs that involves larger and longer species protection buffers and would not allow pedestrian access once prenesting closures are established. It employs the most restrictive seasonal night-driving regulations to be protective of sea turtle nesting and hatching during that time. It also is the least expensive of any of the action alternatives and requires the least amount of personnel to manage implementation due to its more predictable design of ORV route designation. Therefore, we recommend reconsideration of this alternative as a viable action alternative.

However, EPA understands the need of the NPS to appropriately balance access to CHNS from multiple users based on its enabling legislation and other regulations. If the impacts of implementing Alternative D are considered significantly adverse on other users and socioeconomic factors, EPA recommends implementation of Alternative C, or perhaps some other hybrid alternative, as a reasonable compromise to achieve more access and greater flexibility with regard to ORV designation than Alternative D. Alternative C would provide greater protections for sensitive species with larger seasonal buffers, lower carrying capacities, and much fewer new access ramps, parking lots, and new roads as compared to Alternative F. Alternative C also appears to have approximately similar socioeconomic impacts as the preferred alternative.

A number of mitigation measures are proposed in the Draft EIS to avoid or minimize potentially adverse impacts from implementation of the ORV management plan and to ensure that the park's natural and cultural resources are protected and preserved for future visitors. EPA supports inclusion of these mitigation measures as part of the new management plan and subsequent ORV regulations for CHNS. These measures represent significant monitoring and adaptive management activities to ensure that the increase in ORV access areas and likely

subsequent increase in recreational usage of CHNS do not negatively impact natural and cultural resources.

We rate this document EC-2 (Environmental Concerns). Enclosed is a summary of definitions for EPA ratings. We have concerns that the proposed action identifies the potential for impacts to the environment that should be avoided/minimized. EPA recommends selection of other reasonably available alternatives that are analyzed in the Draft EIS which could reduce the environmental impacts of the proposal. We appreciate the opportunity to review the proposed action. Please contact Ben West at (404) 562-9643 if you have any questions or want to discuss our comments.

Sincerely,

A handwritten signature in black ink, appearing to read "J Mueller", with a stylized flourish at the end.

Heinz J. Mueller, Chief
NEPA Program Office
Office of Policy and Management

Enclosure

cc: National Park Service, Southeast Regional Office

U.S. ENVIRONMENTAL PROTECTION AGENCY

ENVIRONMENTAL IMPACT STATEMENT (EIS) RATING SYSTEM CRITERIA

EPA has developed a set of criteria for rating Draft EISs. The rating system provides a basis upon which EPA makes recommendations to the lead agency for improving the draft.

RATING THE ENVIRONMENTAL IMPACT OF THE ACTION

- § LO (Lack of Objections): The review has not identified any potential environmental impacts requiring substantive changes to the preferred alternative. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposed action.
- § EC (Environmental Concerns): The review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce the environmental impact.
- § EO (Environmental Objections): The review has identified significant environmental impacts that should be avoided in order to adequately protect the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no action alternative or a new alternative). The basis for environmental objections can include situations:
 - 1. Where an action might violate or be inconsistent with achievement or maintenance of a national environmental standard;
 - 2. Where the Federal agency violates its own substantive environmental requirements that relate to EPA's areas of jurisdiction or expertise;
 - 3. Where there is a violation of an EPA policy declaration;
 - 4. Where there are no applicable standards or where applicable standards will not be violated but there is potential for significant environmental degradation that could be corrected by project modification or other feasible alternatives; or
 - 5. Where proceeding with the proposed action would set a precedent for future actions that collectively could result in significant environmental impacts.
- § EU (Environmentally Unsatisfactory): The review has identified adverse environmental impacts that are of sufficient magnitude that EPA believes the proposed action must not proceed as proposed. The basis for an environmentally unsatisfactory determination consists of identification of environmentally objectionable impacts as defined above and one or more of the following conditions:
 - 1. The potential violation of or inconsistency with a national environmental standard is substantive and/or will occur on a long-term basis;
 - 2. There are no applicable standards but the severity, duration, or geographical scope of the impacts associated with the proposed action warrant special attention; or
 - 3. The potential environmental impacts resulting from the proposed action are of national importance because of the threat to national environmental resources or to environmental policies.

RATING THE ADEQUACY OF THE ENVIRONMENTAL IMPACT STATEMENT (EIS)

- § 1 (Adequate): The Draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis or data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.
- § 2 (Insufficient Information): The Draft EIS does not contain sufficient information to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analyzed in the Draft EIS, which could reduce the environmental impacts of the proposal. The identified additional information, data, analyses, or discussion should be included in the Final EIS.
- § 3 (Inadequate): The Draft EIS does not adequately assess the potentially significant environmental impacts of the proposal, or the reviewer has identified new, reasonably available, alternatives, that are outside of the spectrum of alternatives analyzed in the Draft EIS, which should be analyzed in order to reduce the potentially significant environmental impacts. The identified additional information, data, analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. This rating indicates EPA's belief that the Draft EIS does not meet the purposes of NEPA and/or the Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised Draft EIS.